SUPREME COURT, U. S.

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In The Supreme Court Of The United States

October Term, 1969

No. 39

RICHARD HALL AND CHRISTINE HALL,

Appellants

v.

HARRIET BEALS, Clerk and Recorder of El Paso County, and BESS TITUS, Election Supervisor of El Paso County,

Appellees

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

APPELLANTS' BRIEF ON THE MERITS

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Appellants, appearing personally pursuant to the provisions of 28 U.S.C. Section 1654.

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In The Supreme Court Of The United States

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No. 950

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Appellees

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

APPELLANTS' BRIEF ON THE MERITS

OPINION BELOW

The official report of the opinion delivered by the Court below, the United States District Court for the District of Colorado, is contained at 292 F. Supp. 610 (D. Colo., 1968). A copy of that opinion is contained in the Appendix, beginning at page 15.

JURISDICTION

The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. § 1253 as a direct appeal from an order of the three-judge District Court denying, after notice and hearing, an injunction in a civil action that sought to enjoin the enforcement of Colorado's residence requirement for voting for President and Vice-President, CRS 49-24-1 et seq. (1963). Such civil action was required by an Act of Congress to be heard by a three-judge District Court, 28 U.S.C. §§ 2281, 2284.

The appeal was taken within the time limit prescribed by 28 U.S.C. § 2101 (b), which is 60 days from the date of the final order. The judgment for defendants was rendered on October 30, 1968, and the Notice of Appeal was filed December 13, 1968 (see Appendix, Relevant Docket Entries, page ii). The appeal is "taken" as required by 28 U.S.C. § 2101 (b) when the Notice of Appeal is filed, see Rules 10 (1) and 11 of the Rules of the Supreme

Court of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the alleged unconstitutionality of CRS 49-24-1 (1963), which read at the time of the Complaint and at the time of the hearing in District Court as follows:

> "49-24-1. Eligibility of new resident to vote.-- Any citizen of the United States who shall have attained the age of twenty-one years, shall have resided in this state not less than six months next preceding the election at which he offers to vote, in the county or city and county not less than ninety days, and in the precinct not less than fifteen days, and shall have been duly registered as required by the provisions of this article, shall have the right to vote as a new resident for presidential and vice-presidential electors." (Emphasis added).

This statute was amended by the State of Colorado on April 23, 1969, to read as follows:

> "49-24-1. Eligibility of new resident to vote.-- Any

citizen of the United States who shall have attained the age of twenty-one years, who shall have resided, next preceding the election at which he offers to vote, in this state and in the county or city and county not less than two months, and in the precinct not less than fifteen days, and shall have been duly registered as required by the provisions of this article, shall have the right to vote as a new resident for presidential and vice-presidential electors." (Emphasis added)

It is alleged by the appellants that the statute, both as in effect at the time of the complaint and as amended, is unconstitutional under Section 1 of the Fourteenth Amendment to the Constitution of the United States, which reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of

life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."
(Emphasis added.)

The appellees may claim that the statute is constitutional in that it is authorized by Section 1 (2) of Article II of the Constitution of the United States, which reads as follows:

"Each state shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector."
(Emphasis added.)

QUESTIONS PRESENTED FOR REVIEW

1. Whether the six-months residence requirement of CRS 49-2-1 (1963) imposes an unjustified burden upon a would-be voter who moved into the State of Colorado too late to satisfy the requirement and was therefore unable to vote for President and Vice-President;

of his right to travel between the several states, and therefore whether the residence requirement is an unconstitutional infringement of the "right to travel" guaranteed by the Constitution of the United States, with particular emphasis upon the Privileges and Immunities Clause of the Fourteenth Amendment.

2. Whether the six-months residence requirement of CRS 49-24-1 (1963) is a permissible requirement that may be properly imposed by the State of Colorado upon an otherwise qualified voter who seeks to vote only for President and Vice-President, or whether the requirement is an unreasonable and discriminatory one that is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

This is a direct appeal from a decision of a three-judge District Court for the District of Colorado which upheld the constitutionality of CRS 49-24-1 (1963), which statute imposed a six-months residency requirement upon new Colorado residents before allowing them to vote for President and Vice-President. (CRS 49-3-1 [1963] and the Colorado Constitution, Article 7, Section 1, require a one-year residence before allowing one to vote in general, non-Presidential

Appellants, who are husband and wife, moved from the State of California to the State of Colorado on June 15, 1968, upon Mr. Hall's graduation from law school at the University of California, Berkeley, California. Upon their arrival in Colorado, Mr. Hall took permanent employment with the law firm of Quigley, Wilder, Helwig & Palmer in Colorado Springs, and Mr. and Mrs. Hall purchased a home at 1617 North Corona in Colorado Springs, registered their car with the Colorado Department of Motor Vehicles, enrolled their oldest child in a private nursery school, and acquired Colorado drivers' licenses.

On or about August 1, 1968, the appellants sought to register with the appellees to vote in the then-forthcoming national election for President and Vice-President on November 5, 1968, and were informed that they did not meet the six-months requirement of CRS 49-24-1 (1963). (May 5, 1968, was six months before the election and would have been the deadline.) Appellants, who before their move were duly qualified and registered voters in Contra Costa County, California, then appealed to the California election officials for absentee ballots, but were advised that they could not vote in California because they were no longer residents of California. Appellants then applied to the Secretaries of State in

both California and Colorado and were refused ballots in both states. Appellants then, on October 4, 1968, filed this suit in the District Court for the District of Colorado in Denver, Colorado, where their complaint was heard on October 25, 1968, and was turned down on October 30, 1968. This appeal then followed.

Other than the six-months residence requirement of CRS 49-24-1 (1963), appellants were qualified to vote under Colorado law. Both appellants were over twenty-one, native citizens of the United States, and under no known disability such as insanity, commission of a felony, etc., that would have disqualified them from voting. No such disability was raised in the Answer nor at the District Court hearing by appellees, and none was ever presented to appellants by the appellees.

SUMMARY OF THE ARGUMENT

It is contended by the appellants that the six-months residence requirement violates the Federal Constitution on two principal grounds. First, the requirement serves to penalize the new resident's exercise of his fundamental right to travel between states and to establish residence in a new state, a right which is guaranteed and protected by the Federal Constitution. Second, the requirement

violates the Equal Protection Clause of the Fourteenth Amendment in that it is an arbitrary and irrational classification serving no legitimate state purpose or end, yet serving to eliminate a new resident's fundamental right to vote for President and Vice-President.

I. THE "RIGHT TO TRAVEL - PRIVILEGES AND IMMUNITIES" ARGUMENT.

1. The right to travel between the states and to establish residence in any one state is a fundamental right of all citizens, United States v. Guest, 383 U.S. 745 (1966); Shapiro v. Thompson, ___ U.S. ___, 22 L. Ed. 2d 600 (1969). See also Edwards v. California, 314 U.S. 160 (1941). (Mr. Justice Douglas and Mr. Justice Jackson, concurring).

2. Anything that serves to penalize the exercise of this fundamental right to travel is unconstitutional even when admittedly permissible state objectives are being considered unless a compelling state interest is served. Shapiro v. Thompson, supra. This is doubly true when, as in this case, the equally fundamental right to vote is that which is being penalized.

3. Colorado's waiting period requirement, when voting for President and Vice-President, does not serve any legitimate state interests whatsoever,

much less a compelling state interest. Justifications traditionally given for residence requirements do not apply when voting for President and Vice-President.

(a) Residence in Colorado is not relevant to a voter's being a member of the community to be governed by the one to be elected, for such "community" in a Presidential election is the national community, not a state community. Any United States citizen is a member of the national community, and thus has a stake in the outcome of the Presidential election and will be affected by the fiscal policies and political policies of the man chosen to be President, no matter what state he lives in or moves to.

(b) Residence in Colorado does not make a voter any more qualified to vote for President, nor any more familiar with the candidates and issues involved, for such familiarity and knowledge comes from national magazines, TV, and newspapers, national campaign speeches and appearances, and other national sources. The issues involved in the race for President are national in scope.

(c) A six-months waiting period does not preserve or strengthen the purity of elections, nor does it prevent double voting or voter fraud. The sanction that serves these purposes is the oath the voter takes upon registration and the

possible prosecution for perjury should the voter break or violate his oath. This sanction would exist whether or not a six-months waiting period exists.

Nor does the waiting period serve any "administrative purposes," for a voter who does qualify need not apply for the ballot until the Friday before the election CRS 49-24-3 (1963).

In the event the waiting period is felt to serve the purity of elections, the waiting period in question here is too broad and cumbersome a "blunderbuss" to use for such purposes when a simple letter or telephone call to the old state could prevent double voting, cf Shapiro v Thompson, supra, 22 L. Ed. 2d at 616 - 17, and reasonable residence criteria could ensure that all voters really were residents, cf Carrington v. Rash, supra, 380 U S 89, 91 - 96 (1965). Numerous other states get along successfully with shorter residence requirements, and there is no showing that they have been subjected to voter fraud or double voting. Thus, Colorado's waiting period requirement is overly broad, and hurts legitimately qualified voters in addition to whatever uncertain effect it might have on fraudulent voters

4 The "Privileges and Immunities" Clause of the Fourteenth Amendment is a proper constitutional basis for the claimed right to travel While United

States v. Guest and Shapiro v. Thompson, supra, did not specifically ascribe the right to travel to any particular constitutional provision, those cases do cite with approval earlier Supreme Court cases that do rely upon the Privileges and Immunities Clause. See Edwards v. California, supra, and Twining v. New Jersey, 211 U.S. 78 (1908). The Privileges and Immunities Clause covers those privileges and immunities which arise or grow out of the relationship of United States citizens to the national government, Hague v. C.I.O., 307 U.S. 496, 520 - 521 (1939); Twining v. New Jersey, supra, 211 U.S. at 97, which does include the right to travel from state to state, and should include the right to vote for President and Vice-President.

II. THE EQUAL PROTECTION ARGUMENT.

1. The right to vote is a fundamental and basic right of all citizens, and can be limited by the states only for compelling state interests. Kramer v. Union Free School District No. 15, ____ U.S. ____, 37 Law Week 4530 (1939); Williams v. Rhodes, 393 U.S. 23, 30 - 31 (1968). Any restrictions upon the right to vote will be closely scrutinized and carefully confined. Harper v. Virginia Board of Elections, 383 U.S. 663, 670 (1966); Reynolds v. Sims, 377 U.S. 533, 561 - 562 (1964).

2 When evaluating voter qualifications against the Equal Protection Clause, this Court must consider the facts and circumstances of the law, the interests which the state claims to be protecting, whether the classification bears a reasonable and just relation to the purposes allegedly served, and the interests of those disadvantaged by the classification. Kramer v Union Free School District No. 15, supra; Williams v. Rhodes, supra, 393 U S at 30 (1968); McLaughlin v Florida, 379 U S 184, 190, 191 (1964)

3 The six-months waiting period does not serve any state purposes, much less a compelling interest, and is unreasonable, arbitrary, overly broad, and unconstitutional discrimination in violation of the Equal Protection Clause. This can be seen for the same reasons put forth under the "right to travel" argument summarized above

III. ARTICLE II, SECTION 1 OF THE UNITED STATES CONSTITUTION DOES NOT AUTHORIZE OR JUSTIFY ANY STATE RESTRICTION UPON THE RIGHT TO VOTE OR THE RIGHT TO TRAVEL THAT IS IN VIOLATION OF SOME OTHER CONSTITUTIONAL PROVISION

States have attempted to rely upon this constitutional provision to justify other voter qualification and election requirements, and this Court has held

that Article II, Section 1 does not justify a requirement which is in violation of some other provision in the Constitution. Williams v. Rhodes, supra, 393 U.S. at 28 - 29; Katzenbach v. Morgan, 384 U.S. 641, 647 (1966). See also Carrington v. Rash, supra, and Harper v. Virginia Board of Elections, supra

IV. PREVIOUS CASES WHICH WERE RELIED UPON BY THE DISTRICT COURT BELOW TO SUPPORT ITS DECISION DO NOT REQUIRE THE RESULT REACHED, CAN BE DISTINGUISHED FROM THIS CASE, AND HAVE BEEN CHANGED BY RECENT DEVELOPMENTS IN THE LAW.

(a) Drueding v. Devlin, 234 F. Supp. 721 (D. Md., 1964), affirmed per curiam, 380 U.S. 125 (1965), is the leading case involving the question presented here. Appellants contend Drueding is not controlling. First, appellants feel Drueding was incorrectly decided by the District Court, and was later affirmed per curiam by this Court without the advantages of considering written briefs and oral argument.

Even assuming Drueding was correctly decided at the time, the developments in the law since Drueding compel a result different to the one reached in that case. Williams v. Rhodes and Katzenbach v. Morgan, supra, eliminated any reliance upon Article II, Section 1 of the U.S. Constitution. Kramer v. Union Free School

District No. 15, Williams v. Rhodes and Harper v. Virginia Board of Elections, supra, established the compelling interest test with close scrutiny standards of evaluation upon voter restrictions. Harper v. Virginia Board of Elections and Carrington v. Rash, supra, struck down particular voter qualifications imposed by states. Finally, a new legal concept, the right to travel, has been set forth in Shapiro v. Thompson, supra, and yet was not before the Drueding Court. Chief Justice Warren and Mr. Justice Black felt that Shapiro v. Thompson requires a result opposite to that reached in Drueding, Shapiro v. Thompson, 22 L. Ed. 2d at 627.

(b) Pope v. Williams, 193 U.S. 621 (1904) specifically left open the question of the right to vote for electors of President and Vice-President, 193 U.S. at 633, and any citation of Pope must therefore be dictum in this case.

(c) Carrington v. Rash and Harper v. Virginia Board of Elections, supra, mention "reasonable" residence requirements in dictum not in context here and both cite Pope v. Williams, supra, as authority when Pope left open the question presented here. Carrington and Harper went on to strike down the voter qualification in question in each case.

(d) Lassiter v. North Hampton

of the last three national elections for President have been decided by very slim margins. In 1960 the difference in popular vote between John F. Kennedy and Richard M. Nixon was only 118,000, U. S. Department of Commerce, Statistical Abstract of the United States, 1964 (Government Printing Office), p. 369, while in 1968 the difference in popular vote between Richard M. Nixon and Hubert H. Humphrey was 399,704, Associated Press final election returns, December 11, 1968, contained in Congressional Quarterly, December 13, 1968, p. 3278. In both these elections, even using the lowest estimate of two million for the number of disenfranchised voters, the number of voters prevented from voting because of state, county and precinct residence requirements was approximately five times the amount necessary to change the result in 1968, and fifteen times the amount necessary in 1960.

The election of this country's President and Chief Executive should not be limited in such fashion, unless compelling reasons support such limitation. The appellants contend that no such compelling reason is served by the imposition of state waiting period requirements when a voter seeks to vote only for President and Vice-President, and therefore the waiting period requirement is unconstitutional for two reasons, either one of which would be sufficient for this Court to strike down the requirements:

First, the waiting period aspect of a state residence requirement prevents a newly arrived resident from voting in the Presidential election, and therefore serves to penalize his exercise of his fundamental and constitutionally guaranteed "right to travel" between the several states, without the justification of serving a compelling state interest.

Second, the state residence requirement is without any logical or practical justification and serves no state interest, yet grants the franchise in a selective manner, thus constituting arbitrary and invidious discrimination in violation of the "Equal Protection" clause of the Fourteenth Amendment.

The District Court below in this case recognized the "unfairness and injustice of depriving the [appellants] of their vote," but considered itself "powerless to remedy this since we must follow the law." 292 F. Supp. 610, 615 - f.n. 8 (D. Colo., 1968), Appendix, p. 26. Appellants hope that this Court will recognize that the "law," as set forth infra, compels a reversal of the District Court, and that the injustice of depriving appellants and millions of other voters of their right to vote will be remedied.

I. THE "RIGHT TO TRAVEL - PRIVILEGES AND IMMUNITIES" ARGUMENT.

1. THE RIGHT TO TRAVEL BETWEEN THE STATES IS A FUNDAMENTAL RIGHT OF ALL UNITED STATES CITIZENS.

It is well settled that a citizen of the United States has a fundamental right to travel between the several states and to take up residence in any one state. Shapiro v. Thompson, ____ U.S. ____, 22 L. Ed. 2d 600 (1969); United States v. Guest, 383 U.S. 745 (1966); Edwards v. California, 314 U.S. 160, 178-185 (Douglas and Jackson, J. J., concurring) (1941); Twining v. New Jersey, 211 U.S. 78, 97 (1908); Slaughter-House Cases, 16 Wall. 36, 79 (1872); Crandall v. Nevada, 6 Wall. 35 (1868); Passenger Cases, 7 How. 282 (1849).

This right is not attributed solely to any particular constitutional provision, for

> "[I]t suffices that, as Mr. Justice Stewart said for the Court in United States v. Guest, 383 U.S. 745, 757-758 (1966):
>
> "'The constitutional right to travel from one state to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

> "'[The] right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.'" Shapiro v. Thompson, supra, 22 L. Ed. 2d at 612 - 613.

While appellants, in their Complaint and in their Statement as to Jurisdiction, relied upon the "Privileges and Immunities" clause of the Fourteenth Amendment as the Constitutional basis for the claimed "right to travel," and such reliance is well-supported by previous cases, Edwards v. California, supra, J.J. Douglas and Jackson concurring opinions; Twining v. New Jersey, supra; Crandall v. Nevada, supra, appellants contend that the language of the Shapiro and Guest cases is relevant and equally controlling in this case. Appellants, when moving from California to Colorado in June of 1968, were clearly exercising their fundamental and constitutionally guaranteed right to travel as they were perfectly entitled to do.

2. ANYTHING THAT SERVES TO PENALIZE

THE EXERCISE OF THIS FUNDAMENTAL RIGHT TO TRAVEL IS UNCONSTITUTIONAL UNLESS IT IS SHOWN TO SERVE A COMPELLING STATE INTEREST.

This rule of law has been clearly laid down by this Court in Shapiro v. Thompson, supra, 22 L. Ed. 2d at 615, 617. Even where "admittedly permissible state objectives" are concerned, anything that serves to penalize the exercise of the right to travel is unconstitutional unless it promotes a compelling state interest. Ibid. It must merely "serve to penalize" the exercise of the right -- i.e. if it has the effect or result of penalizing the exercise. Even though there is no deliberate state intention or design of so penalizing the new resident, it is unconstitutional if it serves to penalize him.

Thus, while appellants do not contend that the State of Colorado had the impermissible objective of wanting to keep new residents out of the state, as was the basis for the alternate holding of Shapiro (22 L. Ed. 2d at 611 - 614), it is perfectly clear that Colorado's residence requirement served to penalize appellants' exercise of their right to travel from California to Colorado. If they had stayed in California they could have voted for President. The "penalty" is clear-cut and absolute, and was created solely by the move from California to Colorado.

In addition, when evaluating the weight or magnitude of the "penalty", it must be remembered that what was lost as a result of the penalty on the "right to travel" was the "right to vote" for President and Vice-President. The "right to vote" has been held to be a fundamental right that preserves all other rights, deserving of the most careful protection and to be limited only for compelling state interests. Kramer v. Union Free School District No. 15, ___ U.S. ___, 37 Law Week 4530 (1969); Williams v. Rhodes, 393 U.S. 23 (1968); Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); Carrington v. Rash, 380 U.S. 89 (1965); Reynolds v. Sims, 377 U.S. 533 (1964); Wesberry v. Sanders, 376 U.S. 1 (1964). Thus, the rationale of Shapiro v. Thomas, supra, is doubly enhanced by the fact that this case combines the "right to travel" with the "right to vote."

Thus, unless a compelling state interest is promoted by the state waiting period requirement, the requirement is unconstitutional. The "mere showing of a rational relationship" is not enough; the state interest must be compelling. Shapiro v. Thompson, supra, 22 L. Ed. 2d at 615, 617.

3. COLORADO'S WAITING PERIOD PORTION OF ITS RESIDENCE REQUIREMENT, WHEN VOTING FOR PRESIDENT AND VICE-PRESIDENT, DOES NOT SERVE ANY LEGITIMATE STATE INTEREST WHATSOEVER, MUCH LESS A COMPELLING STATE INTEREST.

Several justifications are traditionally put forth to support residence requirements:

(a) A residence requirement insures that the voter is a member of the "community" to be governed, and thus that the voter has a personal stake in the election outcome and will therefore cast his vote responsibly.

(b) A residence requirement insures that the voter is familiar with the candidates and the issues, and that he will therefore cast his vote intelligently.

(c) A residence requirement insures that a voter is identified with his present community and thus not with his old community, therefore preventing double voting and election fraud.

Upon evaluation, it will be seen that (a) and (b) do not apply at all to state residence requirements in a Presidential election, and (c) does not apply under the facts and operation of Colorado's election procedures.

(a) The "member of the community" argument is inapplicable in a Presidential election.

The "member of the community" argument assumes that if a voter is not a member of the community to be affected

by the election outcome, he might vote irresponsibly. First, he might interfere with the community's fiscal affairs by approving expenditures for developments which he might use without ever having personally to pay for. Similarly, a voter should not be allowed to vote for candidates if he is not going to be personally governed by the candidate chosen. For example, one should not be able to vote for his friend, relative or political choice in another state, because the voter will not have to live under the official once he is elected.

While this is a very understandable justification, it is simply irrelevant in this case. The "community" involved in a Presidential election is a national one. A citizen of the United States will be affected by the fiscal policies of the elected President and will be governed by the President no matter in which state he lives. The President and Vice-President are the only elected officials that govern the Nation as a whole. Residence in any one state is immaterial.

The District Court below in this case recognized that the "member of the community" argument, at least as applied to the problem of interference with fiscal affairs, was inapplicable in a Presidential election, 292 F. Supp. at 614, Appendix at 24. Appellants, to this extent, agree with the District Court and further argue that it is inapplicable in any other context as well, and therefore would ask this Court to disregard as

immaterial any discussion of the "member of the community" justification.

Even should this Court consider the "member of the community" argument applicable, there is a second reason to disregard it here. Appellants were in fact residents of Colorado and members of the Colorado community at the time of the election. Appellants were at the time of the election and are now affected personally by Colorado fiscal policies and elected officials. This comes from being a resident of Colorado, and appellants do not argue against the requirement that they be residents of Colorado at the time of the election. Appellants only object to the requirement of being a Colorado resident for six months before the election. If one is a resident at the time of the election, that serves the interests of the "member of the community" argument; a waiting period for a particular period of time before the election, which is what is at issue here, does nothing to support the interests allegedly served by the "member of the community" concept.

(b) The "familiar with the candidates and issues" argument is inapplicable in a Presidential election.

A voter should live within the "community" involved, so that he becomes familiar with the candidates, their stands on appropriate issues, and how

the candidates compare and differ. The voter will also have the opportunity to talk to other voters and get their opinions and ideas. This will insure that the voter is able to cast his vote intelligently.

While this may be a valid and desirable concept, appellants point out that the "community" involved is again a national community. A voter becomes familiar with the candidates for President and the issues involved through national sources -- national TV and radio, national news magazines, nationally distributed newspaper stories and columns, campaign appearances throughout the nation, and many other ways. The issues are generally national in scope -- the war in Vietnam, civil rights, law and order, inflation, military defense spending, etc. Even issues peculiar to any one state are usually just local particulars of a nationwide problem -- Federal highway building, conservation, "pork-barrel" projects such as dams and flood control, campus disorders, etc. Voters throughout the nation will be discussing the Presidential candidates and issues, so a voter will be able to discuss and compare ideas no matter where he lives or to where he moves.

Residence in any one state is simply immaterial when considering a voter's ability to cast an intelligent vote in the Presidential election and

does not serve the "familiar with the candidates and issues" concept at all. The interest of the state, when it comes to voting, is limited to the power to fix qualifications. Residence, like wealth, race, creed or color, is not germane to one's ability to participate intelligently in the electoral process of selecting the President, and therefore introduces a capricious and irrelevant factor and should be struck down. The degree of discrimination is irrelevant. Cf. Harper v. Virginia Board of Elections, supra, 383 U.S. at 668.

(c) The six-months waiting period imposed by Colorado's residence requirement does nothing to preserve the purity of the election or to prevent double voting or voting fraud.

The District Court below, 292 F. Supp. at 614, Appendix at pp. 24 - 25, relied upon the necessity to preserve the purity of elections and to prevent double voting and election fraud as a justification for state residence requirements. Appellants agree that regulation of the elections is a legitimate state interest, but point out once again that the six-months waiting period of Colorado's residence requirement is irrelevant and inapplicable to the interests desired to be served.

First, Colorado's own election procedures belie the claim that the six-

months waiting period is designed to prevent voter fraud or to serve an administrative purpose. A new resident, if he qualifies by being in the state for six months, does not have to apply for a ballot until the Friday before the election, CRS 49-24-3 (1963).[3] Thus, Colorado cannot claim that the six-month period is used to verify an applicant's claim of residence or to process his application for a ballot. Colorado evidently feels that it can perform all checks and processing between Friday and Tuesday, and appellants accept Colorado's judgment on that point. In addition, as conceded by appellees when before the District Court, Colorado does not send

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[3] 49-24-3. Application for ballot by new resident.-- Such new resident shall make application for a new resident's presidential and vice-presidential election ballot at the applicant's county of residence not earlier than ninety days before the presidential election nor later than the close of business on the Friday immediately preceding the election. Such application shall state the applicant's full name, address, and precinct, that the applicant is a new resident, is qualified to vote under the provisions of section 49-24-1, and shall not vote or has not voted in such election otherwise than by such ballot. Such application shall be signed personally by the applicant or a member of his family. (Emphasis added).

notice of a voter's registration in Colorado to the voter's old state, thus making no effort to prevent double voting in the old state should the voter try to apply for an absentee ballot there. Thus, Colorado does not pretend to use the six months to check residence in the new state or to take the voter off the rolls in the old state. It is apparent by Colorado's own inaction that the six-months waiting period is neither necessary nor used to try to prevent fraud or double voting. Thus, the District Court below was in error when stating that the six-months waiting period served any "administrative reasons," Appendix, p. 25.

Second, a six-months waiting period provides no sanction to prevent double voting or election fraud. If one wishes to lie or deceive the election officials, he will do so whether there is a waiting period imposed or not. If his deception is discovered, he faces the sanction for committing a perjured oath (in Colorado, such perjury could receive confinement in the penitentiary for from one to fourteen years -- see CRS 49-24-5, 49-24-10 (1), and 49-21-6[4]). However, such sanction for perjury can be imposed if there was no waiting period at all. The voter,

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[4] 49-24-5. Affidavit on return envelope.-- The return envelope for the new resident's ballot shall have printed on its face an affidavit in substantially the following

when applying for the ballot, would simply swear that he has not voted anywhere else, that he will not vote anywhere else, and that he is presently a

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[4] (Continued)

form:

State of Colorado)
) ss.
County of _____)

I, _____, being first duly sworn according to law, depose and say that I am a qualified and registered new resident elector eligible to vote for presidential and vice-presidential electors in precinct _____, county of _____, and state of Colorado; that I have not applied for nor do I intend to apply for an absentee voter's ballot from any other state; that I have not voted and will not vote otherwise than by this ballot; and that my residence address is _____.

_____
Signature of voter

Subscribed and sworn to before me this _____ day of _____, 19_____.

_____
(Title and name of officer authorized by law to administer oaths.)

bona fide resident of Colorado otherwise qualified to vote. If this is true, Colorado's interest in preventing double voting or fraud is met; if it is not true, he can be punished for perjury. A waiting period, by itself, adds nothing to the perjury sanction which Colorado already has, and is therefore superfluous.

Nor is a six-months waiting period a very appropriate safeguard against an

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[4] (Continued)

49-24-10. Penalties. -- (1) Any person who shall willfully make a false statement or affidavit under this article shall be guilty of perjury, and upon conviction thereof, shall be punished as provided in the Colorado election code of 1963.

49-21-6. Perjury. -- Any person having taken any oath or made any affirmation required by articles 1 to 21 of this chapter, who shall swear or affirm willfully, corruptly, and falsely in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury, as the case may be, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

influx of foreign voters streaming into a state on Election Day. While the state election officials might have legitimate concern over non-bona fide "residents" attempting to move into a state just for Election Day to manipulate an otherwise close race, a six-months waiting period is too long to serve such a purpose, and thus strikes too broadly and results in the disenfranchising of millions of bona fide residents.

Colorado could and should set up reasonable residence requirements such as proof of employment, permanent housing, registration of the automobile, acquisition of a driver's license, etc., to verify that any voter is a bona fide resident and not someone brought in just for Election Day. However, the blanket disenfranchisement of voters without attempting to evaluate whether they are true residents is unacceptable and should be struck down. Cf. Carrington v. Rash, supra, 380 U.S. 89, 91 - 96 (1965), where this Court refused to accept Texas' blanket disenfranchisement of all military personnel, stating that Texas could impose reasonable residence requirements to insure that any serviceman was a true resident, but that the Texas provision was void because it left no room for a voter in the military to prove he was in fact a Texas resident. In this present case, appellants were willing to establish the fact of their residence, and could have met any reasonable requirement

normally used to prove "residence," but were prevented from voting because of an inflexible six-months rule that does not serve the purposes alleged for it.

Put another way, an inflexible, rigid six-months waiting period is too cumbersome a "blunderbuss" to serve against fraud and double voting. When a simple telephone call or letter to the old state would take the voter off the the rolls there and thus prevent double voting, and when a simple affidavit much like the one already contained in CRS 49-24-5 (1963), supra, would provide all the sanction presently available to deter double voting, and when a state could set up reasonable requirements to guarantee "residence" without requiring a "waiting period," it is unreasonable to accomplish these objectives by the blunderbuss method of denying the vote to all newcomers for six months. Cf. Shapiro v. Thompson, supra, 22 L. Ed. 2d at 617, where this Court uses similar language and reasoning to turn aside similar arguments raised in an attempt to support state residence requirements for welfare assistance.

(d) Other states find that a shorter residence is acceptable and have had no problems.

At this point, it might be useful to consider the residence requirements of the other states. This Court, in two similar recent cases, has found it helpful

to see what other procedures or requirements are used by other entities facing the same problem. See Williams v. Rhodes, supra, 393 U.S. at 33, f. n. 9, where the Court considers the percentage requirements necessary to get third parties on the ballot in 42 other states, and Shapiro v. Thompson, supra, 22 L. Ed. 2d at 617, where the Court evaluates procedures used by the District of Columbia to prevent double welfare payments and to provide interim assistance when a new resident moves into the District. When deciding what is "reasonable" and what else might serve the desired ends, it should be helpful to see what other states have come up with for residence requirements in Presidential elections.

The state-imposed residence requirements of the other 49 states for voting for President and Vice-President are collected in Table I to this Brief. As seen in Table I, 21 states plus New Mexico, whose try for a special requirement has been declared unconstitutional, have only a general residence requirement applicable in all elections, including the Presidential election. These requirements are grouped as follows:

2 years - 1 state	Mississippi
1 year - 15 states (plus New Mexico)	Alabama, Arkansas, Hawaii, Kentucky, Louisiana, Montana,

	Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wyoming (and New Mexico, whose special requirement has been declared in violation of the State Constitution).
6 months - 3 states	Indiana, Iowa, and Nevada.
3 months - 2 states	New York and Pennsylvania.

Twenty-nine states, including Colorado, have adopted special requirements for Presidential elections. These special requirements have taken two forms. First, a remedy of a type not at issue here but one that seeks to solve the same problem, some states allow a former resident who has moved out of his "old state" to retain his voting residency in the old state for a certain period of time unless and until he can meet the residence requirement of his "new state." Eight states have adopted this technique, as follows:

Until qualified in new state - 3 states	Michigan, New Jersey and Wyoming

24 month retention - 3 states	Connecticut, Texas, and Wisconsin
15 month retention - 2 states	Arizona and Vermont.

Finally, in response to a 1962 proposal of the National Conference of Commissioners on Uniform State Laws, 28 states plus New Mexico have established special, shorter residence requirements or time limits for registration for new residents seeking to vote in the Presidential election in their "new state." These requirements are grouped below:

6 months -	formerly Colorado, the subject of this suit.
3 months - 1 state	Delaware.
60 days - 8 states, plus Colorado	Arizona, Colorado (after amendment since this suit began), Connecticut, Idaho, Illinois, Missouri, North Carolina, Texas, and Washington
54 days - 1 state	California.

45 days - 2 states	Kansas and Maryland.
40 days - 1 state	New Jersey
31 days - 1 state	Massachusetts
30 days - 8 states (including New Mexico)	Florida, Georgia, Maine, Michigan (in city or township), Minnesota, New Hampshire, New Mexico (declared unconstitutional in violation of State Constitution), and Oregon
15 days - 1 state	Oklahoma.
10 days - 1 state	North Dakota.
4 days - 2 states	Alaska and Ohio
2 days - 1 state	Nebraska.
No minimum - 1 state	Wisconsin

In summary, 20 states (when including New Mexico, whose special shorter requirement is inoperative) have general

requirements of six months or more, while 30 states have either general or special requirements ranging from three months down to no residence requirement or application time limit at all. Thus, three-fifths of the states feel they can operate with a residence requirement of three months or less, and sixteen states, not counting New Mexico, require 40 days or less. Five states use 10 days or less, including one state with no requirement at all. Appellants are not aware of any voter fraud or perjured oaths in these states with shorter requirements. Fourteen states (Colorado, plus Delaware, Florida, Georgia, Idaho, Maine, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Texas, and Washington -- the other states not responding to this particular question by the time for submission of this Brief) stated affirmatively in letters to the appellants that they had no known problems of voter fraud or perjured oaths when using their special requirements.

This analysis of the other states' requirements suggests that the substantial majority of other states get by successfully with requirements shorter than six months, and that the prevention of voter fraud or double voting is not a significant problem. In addition, most states using special requirements provide notice of a new resident's registration to the election officials of the old state, and some of these states require confirmation

of disenrollment from the old state before allowing the new resident to vote in the new state. These two simple additional requirements that are used without apparent administrative burden by several states would effectively guarantee elimination of any double voting or fraud, and require only an exchange of letters, which can be completed in a week or two at most, or a telephone call, which is instantaneous.

As in Shapiro v. Thompson, supra, when such simple steps are available to serve the state's interest in preventing fraud, the grossly over-restrictive and logically inapplicable waiting period requirement should not be allowed to continue to infringe upon the fundamental and highly prized "right to travel" and "right to vote."

4. THE "PRIVILEGES AND IMMUNITIES" CLAUSE OF THE FOURTEENTH AMENDMENT IS A PROPER AND VALID CONSTITUTIONAL BASIS FOR THE CLAIMED "RIGHT TO TRAVEL."

Appellants contend that the Privileges and Immunities Clause of the Fourteenth Amendment is a proper and valid basis for the claim of a constitutional "right to travel." The later cases of United States v. Guest and Shapiro v. Thompson, supra, do not rely solely and specifically upon the Privileges and Immunities Clause, but certainly cite with approval cases such as Edwards v. California and Twining v. New Jersey,

supra, that do rest upon the Privileges and Immunities Clause. Shapiro does not "ascribe the source of this right to travel interstate to a particular constitutional provision," 22 L. Ed. 2d at 612, but cites as part of the historical development those cases, Edwards and Twining, that do rely upon the Fourteenth Amendment's Privileges and Immunities Clause, ibid, f. n. 8.

The Shapiro dissents of Chief Justice Warren and Mr. Justices Black and Harlan suggested they felt that the Privileges and Immunities Clause was inapplicable in Shapiro because Congress had approved one-year residence requirements for welfare by the enactment of 42 U.S.C. § 602 (b). However, that statute is not pertinent here, and there is no issue of Congressional "approval" of state residence requirements for voting present in this case. Thus, even under the Shapiro dissents, the Privileges and Immunities Clause of the Fourteenth Amendment should apply in this case. This is a state-imposed restriction, and infringes upon the "right to travel." It appears agreed that "there is a constitutional 'right to travel' between States free from unreasonable governmental interference." United States v. Guest, supra, 383 U.S. at 763 (Mr. Justice Harlan, dissenting).

The Privileges and Immunities Clause has most often been interpreted to cover

those privileges and immunities which "arise or grow out of the relationship of United States citizens to the national government," Shapiro v. Thompson, supra, Mr. Justice Harlan dissenting, 22 L. Ed. 2d at 634, citing Hague v. CIO, 307 U.S. 496, 520 (1939). See also Twining v. New Jersey, 211 U.S. 78, 97 (1908). These "privileges and immunities" have included the right to travel from state to state, Crandall v. Nevada, Twining v. New Jersey, Edwards v. California (J.J. Douglas and Jackson, concurring), supra.

In addition, the facts of this case made the Privileges and Immunities Clause doubly applicable. Not only was the "right to travel" infringed; the right to vote for President and Vice-President was also infringed. It is difficult to imagine a right more closely associated with the national government or one that more plainly "grows out of the relationship of United States citizens to the national government" than the right to vote for President and Vice-President. The President and Vice-President are the only officials elected by the Nation as a whole to govern the Nation as a whole. The right to vote for Congressman and Senator is clearly a right of national citizenship, Ex Parte Yarborough, 110 U.S. 651 (1884); United States v. Classic, 313 U.S. 299 (1941), and the right to vote for President should also be such a right. "It is . . . essential to the successful working of this government that the great

organisms of its executive and legislative branches should be the free choice of the people. . .," Ex Parte Yarborough, 110 U.S. at 666 (emphasis added).

II. THE "EQUAL PROTECTION" ARGUMENT.

1. THE RIGHT TO VOTE IS A FUNDAMENTAL RIGHT OF ALL CITIZENS, AND IS TO BE CAREFULLY PROTECTED.

No one can dispute that the "right to vote" is a highly prized and carefully guarded right of all citizens in a democracy.

> "[W]e have said with reference to the right to vote:
>
> "'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'" Williams v. Rhodes, 393 U.S. 23, 31 (1968), citing Wesberry v. Sanders, 376 U.S. 1, 17 (1964) and Carrington v. Rash, 380 U.S. 89 (1965).

This has been understood and appreciated by this Court since Ex Parte Yarborough, 110 U.S. 651, 664 - 666 (1884). See

also Kramer v. Union Free School District No. 15, supra; Harper v. Virginia Board of Elections, supra; Reynolds v. Sims, 377 U.S. 533 (1964).

If the right to vote is important at any time, it is doubly important in the national election of the President and Vice-President. They are the only officials elected by the Nation as a whole, and it is in their election that our democratic process is revealed best. The entire world watches the election of the American President and Vice-President. Their election represents the voice of all of us in choosing our leaders and our course for the Nation as a whole. Their actions affect all of us from coast to coast, and are felt around the world. A President sets the tone and pace and atmosphere for the country as a whole. The President, in the eyes of the rest of the world, "is" the United States, and his choice is the keystone of our electoral process. The right to vote for one's nation's leader is the most precious jewel in the democratic crown of free elections and citizen participation, and should be most carefully guarded.

2. ANY RESTRICTIONS UPON THE RIGHT TO VOTE ARE TO BE CLOSELY SCRUTINIZED AND CAREFULLY CONFINED, AND THE RIGHT TO VOTE MAY BE LIMITED ONLY FOR COMPELLING INTERESTS.

"We have long been mindful that

where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined." Harper v. Virginia Board of Elections, supra, 383 U.S. at 670; see also Reynolds v. Sims, supra, 377 U.S. at 561 - 562 ("carefully and meticulously scrutinized"). This Court recently, in Williams v. Rhodes, supra, used an equally stringent test, stating that in the area of political participation and association a compelling state interest must be served to justify any restrictions, 393 U.S. at 30 - 31. Finally, in Kramer v. Union Free School District No. 15, supra, 37 Law Week 4530 (1969), and Cipriano v. City of Houma, 37 Law Week 4598 (1969), this Court spelled out carefully and at length the "close and exacting examination" that faces any statute that grants the franchise in a selective manner. There is to be no presumption of constitutionality, nor will a mere rational basis for the law suffice, but rather the statute must meet a compelling state interest.

These stringent tests are proper when considering the most basic and fundamental of all democratic rights, the right to vote, and should be applied to this case. When such application is made, it is clear that Colorado's six-month waiting period before being allowed to vote for President is unreasonable, arbitrary, and invidious discrimination in

violation of the Equal Protection Clause of the Fourteenth Amendment.

3. THE SIX-MONTHS WAITING PERIOD CONSTITUTES UNREASONABLE AND THUS UNCONSTITUTIONAL DISCRIMINATION IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

In considering whether a state law violates the Equal Protection Clause, this Court should consider the facts and circumstances of the law, the interests which the state claims to be protecting, whether the classification bears some reasonable and relevant relationship to the state interests or purposes allegedly served, and the interests of those who are disadvantaged by the classification. Kramer v. Union Free School District No. 15, supra, citing Williams v. Rhodes, supra, 393 U.S. at 30, which cited Carrington v. Rash, supra, and Skinner v. Oklahoma, 316 U.S. 535 (1942); see also McLaughlin v. Florida, 379 U.S. 184, 190 - 191 (1964).

"The classifications must be tailored so that the exclusion of appellant and members of his class is necessary to achieve the articulated state goal." Kramer v. Union Free School District No. 15, 37 Law Week at 4531 (emphasis added).

In short, the statute must serve some legitimate state purpose; that purpose when considering the right to vote

must be a compelling state interest; the statute must be relevant and reasonable in light of its alleged purpose; and the statute must be subjected to careful and meticulous scrutiny. Under such an evaluation, Colorado's waiting period is unreasonable and in violation of the Equal Protection Clause. There is no question about the discrimination involved; the statute grants the franchise selectively to a class who can vote and excludes another class who cannot. The only question, then, is whether the waiting period serves any state purpose, and whether it does so in a reasonable and relevant fashion.

This question has been analyzed under the "right to travel" argument, supra, and that analysis need not be repeated here. In very brief recapitulation, appellants argue that a six-months waiting period is totally irrelevant to both the "member of the community" and "familiar with the candidates and issues" justifications normally advanced to support voting-residence requirements. Furthermore, the waiting period, upon analysis, is irrelevant to the "maintain the purity of elections" justification under Colorado procedures and serves no administrative purposes, and, even if considered to be relevant, it is unreasonably long in light of the fact that Colorado could, as numerous other states do, prevent double voting by a simple letter or telephone call to the voter's old state.

III. ARTICLE 2, SECTION 1, OF THE UNITED STATES CONSTITUTION DOES NOT AUTHORIZE OR JUSTIFY ANY STATE RESTRICTION UPON THE RIGHT TO VOTE FOR PRESIDENT THAT IS IN VIOLATION OF SOME OTHER CONSTITUTIONAL PROVISION.

Article 2, Section 1, of the United States Constitution proves that, "Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors. . . ." States have tried to argue that this provision gives them a free hand in imposing whatever voter restrictions they might choose to impose, and that no restriction can be "unconstitutional" in light of Article 2, Section 1. The District Court below erred in relying upon this provision, see Appendix, p. 19, for states do not have a free hand any longer, even assuming they once did.

This argument has been recently and "obviously" rejected, when it was specifically held that "no state can pass a law regulating elections that violates the Fourteenth Amendment's command that "No State shall . . . deny to any person . . . the equal protection of the laws.'" Williams v. Rhodes, supra, 393 U.S. at 29. See also Katzenbach v. Morgan, 384 U.S. 641, 647 (1966), where this Court stated,

> "[T]he States have no power to grant or withhold the fran-

> chise on conditions that are forbidden by the Fourteenth Amendment, or any other provision of the Constitution. Such exercises of state power are no more immune to the limitations of the Fourteenth Amendment than any other state action. The Equal Protection Clause itself has been held to forbid some state laws that restrict the right to vote."

Thus, as far as the Equal Protection argument is concerned, it is clear that Article 2, Section 1, does not authorize any statute if that statute violates the Equal Protection Clause.

As far as the Right to Travel argument is concerned, both Williams v. Rhodes and Katzenbach v. Morgan, ibid., stated that no law could be passed that violated the Fourteenth Amendment or any other constitutional provisions. It is not just the Equal Protection Clause that can override Article 2, Section 1, but any other constitutional provision. Appellants have relied as well upon the Privileges and Immunities Clause to support their "right to travel," as was done in Edwards v. California (concurring opinions) and Twining v. New Jersey, supra. This Court in Shapiro v. Thompson, and United States v. Guest, supra, did not ascribe the right to travel to any particular constitutional provision, but

stated it was clear that the right exists. Thus, Article 2, Section 1, cannot support a law in violation of the "right to travel" either.

Colorado would not now argue that it could impose a poll tax before allowing people to vote, Harper v. Virginia Board of Elections, supra, nor would Colorado argue now that it could bar all servicemen from voting, Carrington v. Rash, supra. By the same token, Colorado should not argue that it, pursuant to Article 2, Section 1, can impose this residence requirement if it violates either the Equal Protection Clause, Privileges and Immunities Clause, or the Right to Travel.

IV. PREVIOUS CASES WHICH WERE RELIED UPON BY THE DISTRICT COURT TO SUPPORT ITS DECISION DO NOT REQUIRE THE RESULT REACHED, CAN BE DISTINGUISHED FROM THIS CASE, AND HAVE BEEN CHANGED BY RECENT DEVELOPMENTS IN THE LAW.

1. Drueding v. Devlin, 234 F. Supp. 721 (D. Md., 1964); affirmed per curiam 380 U.S. 125 (1965).

Drueding v. Devlin is the only case that has considered the problem faced here.[5] Appellants feel that the Drueding

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[5]Appellants do not agree Drueding is

District Court erred in its decision, and that Drueding is an unfortunate mistake that should be remedied so future District

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[5] (Continued)

is factually the same as this case.

Maryland, in Drueding, had only one general residence requirement for all elections, while Colorado, in this case, had established a separate, special requirement for Presidential elections. Colorado thus voluntarily established a new class of voters by singling out a specific problem. Having done so, the particular class and all its restrictions must be judged on its own specific reasoning and justifications. Justifications such as the "member of the community" argument applied to the general all-purpose residence requirement found in Maryland and therefore could be relied upon in Drueding, but those justifications do not apply to Colorado's special Presidential requirement and therefore should not have been relied upon here. Once the franchise was granted to the special class of electorate, lines may not be drawn that are inconsistent with the Equal Protection Clause. Cf. Harper v. Virginia Board of Elections, supra, 383 U.S. at 665.

Thus, any administrative problems foreseen by the Drueding District Court

Courts will not feel compelled to follow the "law" despite recognized "unfairness and injustice" as the District Court below did, Appendix, p. 26, f. n. 8. This Court, when affirming Drueding per curiam, was without the benefit of briefs and oral argument, and should not now, after full briefs and argument, feel compelled to follow its earlier decision.

The Drueding District Court was in error when relying upon the "member of the community" justification to uphold Maryland's residence requirement, 234 F. Supp. at 724. A reading of the Maryland case cited by the District Court, Shaeffer v Gilbert, 73 Md. 66, 20 A. 434, 435 (1890), shows that Shaeffer was discussing the election of state officials ("governor, judge, attorney general, . . ."), and thus is inappropriate in a Presidential context.

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[5] (Continued)

such as the problems of printing special ballots, establishing special registration procedures, providing special voting places and election supervisors, etc . . in order to make an exception to the one basic residence requirement then existing in Maryland, had been eliminated by Colorado's specially adopted procedures. Thus, to judicially overrule Colorado's situation would not upset matters as much as having struck down Maryland's law.

Even if Drueding was once correctly decided, the legal theoretical underpinnings of that case have since been modified by more recent cases. Williams v. Rhodes and Katzenbach v. Morgan, supra, clarified that Article 2, Section 1, could not justify a statute that otherwise violated the Constitution. Kramer v. Union Free School District No. 15 and Williams v. Rhodes, supra, established the "compelling interest" test, and Harper v. Virginia Board of Elections, supra, required careful scrutiny and close confinement of voter restrictions. Carrington v. Rash, supra, struck down an inflexible Texas law that wouldn't allow a bona fide resident to demonstrate his "residence." The Supreme Court is not confined to earlier notions of equality, and those notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change. Harper v. Virginia Board of Elections, 383 U.S. at 669.

In addition, the "right to travel" concept as developed in Shapiro v. Thompson, supra, was not even before either the Drueding District Court or this Court when affirming Drueding per curiam. A newly developed and expanded legal concept is present here, and the Drueding result is off the point when evaluating Shapiro's effect. Former Chief Justice Warren, with whom Mr. Justice Black joined, felt that Shapiro's rationale "would seem to require the opposite conclusion" from Drueding,

Shapiro v. Thompson, supra, 22 L. Ed. 2d at 627, a conclusion firmly agreed with by appellants.

2. Pope v. Williams, 193 U.S. 621 (1904).

Pope v. Williams specifically left open the question of qualifications for someone voting for President and Vice-President: "In this case no question arises as to the right to vote for electors of President and Vice-President, and no decision is made thereon." 193 U.S. at 633. Thus, any citation of Pope must be read as dictum in a case that deliberately left open the question faced here.

3. Minor v. Happersett, 21 Wall. 162 (1875).

Minor v. Happersett has been distinguished in Ex Parte Yarborough, supra, 110 U.S. at 664, where this Court stated that the right to vote for Congressman and Senator is based upon the Constitution that created the offices and pointed the means of ascertaining who should be electors; Yarborough went on to discuss the importance of the right to vote for both the Legislative and Executive branches of our national government, suggesting that Minor v. Happersett is distinguishable when considering Presidential elections as well.

4. Carrington v. Rash, 380 U.S. 89 (1965).

While Carrington did say that "Texas has unquestioned power to impose reasonable residence restrictions on the availability of the ballot," 380 U.S. at 91, that language is inappropriate here. First, that language was in reply to Texas' argument that military men would be subject to military orders and therefore too transient to be allowed to vote, and should be viewed in that context. This Court, in reasoning that applies to our situation as well, was saying Texas could impose requirements to verify "residence," but went on to say that Texas could not have an inflexible rule that prevents voters who are in fact bona fide residents from establishing their residence. Thus, while Texas (and Colorado) may have a legitimate concern about non-bona fide "floaters" coming in to manipulate a close election and could therefore have requirements to verify "residence" in the state, Texas (and Colorado) cannot have a flat, arbitrary qualification that leaves no room for the bona fide resident. Appellants here could have verified bona fide "residence," and would have been happy to do so, but were prevented from voting because of a "waiting period" that is as inflexible as Texas' no-military rule was in Carrington.

Second, it must be remembered that Carrington spoke only of "reasonable" residence requirements. This, of course, brings up the question of what is "reason-

,able," which must be evaluated in light of the alleged state interests and the relevancy of the classification in respect to the state interests. In the special context of Presidential elections, residence requirements are inapplicable, as has been argued above.

Third, Carrington cited Pope v. Williams, supra, as its authority for the above-quoted statement, and, as seen, Pope specifically leaves open the question of Presidential elections.

Finally, we should not be misled by what can only be dictum. It is far more significant to remember the result of Carrington, which was to strike down as unconstitutional Texas' provision concerning no vote for servicemen-residents.

5. Harper v. Virginia Board of Elections, 383 U.S. 663 (1966).

Harper's only mention of residence requirements was in an introductory clause, "Thus without questioning the power of a State to impose reasonable residence restrictions on the availability of the ballot (see Pope v. Williams, 193 U.S. 621). . .", 383 U.S. at 666. This dictum is of no help to appellees here, for, as with Carrington, Harper cited Pope, which left open the question of Presidential elections, talked only of "reasonable" restrictions which thus

requires evaluation in this special context, and was only an introduction in a case that went on to strike down the voter qualification present there.

6. Lassiter v. North Hampton County Board of Elections, 360 U.S. 45 (1959).

Lassiter stated a residence requirement was an "example" of a factor that could be taken into consideration in determining the qualifications of voters, 360 U.S. at 50 - 51. Appellants do not argue with this statement when it is recognized as dictum and only a general recitation of possible factors. In any election save that for President and Vice-President, a reasonable-length residence requirement might serve either the "member of the community" or "familiar with the candidates and issues" justifications. However, Lassiter's "example" should not be read out of context as being controlling here.

V. THIS MATTER IS NOT MOOT, FOR THE PROBLEM CONSIDERED HERE IS ONE THAT WILL AFFECT FUTURE ELECTIONS, AND THEREFORE THE COURT SHOULD CONSIDER THE MATTER ON ITS MERITS.

Appellees, in their Motion to Dismiss or Affirm under Rule 16, raised the question that this case was moot in that the 1968 election is over, and that no relief could be awarded to the appellants. In addition, the Colorado Legislature has

amended the six-months waiting period in question down to two months (the bill became a law on April 23, 1969, some two weeks before probable jurisdiction was noted in this case but after the Statement as to Jurisdiction and the Motion to Dismiss or Affirm had been filed). Appellees presumably will raise both these considerations in their brief on the merits, and will argue that this case should be dismissed as moot. Appellants do not agree that the matter is moot, and ask that this Court consider the questions presented here on their merits.

The fact that the 1968 election is over, and that there is no relief that can be presented to the appellants does not make this matter moot. The problems faced in this case will continue to govern future elections unless they are squarely faced and resolved by the Court here. Millions of otherwise qualified voters will be disenfranchised from voting for President and Vice-President in 1972 by state residence requirements unless the Court discusses the question and thereby provides a definitive answer in this field. There is therefore a continuing controversy in this federal-state area, and the problem is capable of repetition, yet evading review. In a similar situation coming to the Court after the 1968 election was over, the Court turned aside the mootness argument. See Moore v. Ogilvie, ____ U.S. ____, 23 L. Ed. 2d 1, 4-5 (1969). See also

Gray v. Sanders, 372 U.S. 368, 375 - 376 (1963). The matter is one that needs a definitive answer by the Supreme Court, and one which will continue to plague District Courts below in the future Presidential election years unless treated on its merits now.

In addition, appellants are suing as the representatives of a class, and state that there are common questions of fact and law affecting all members of that class. If that class of disenfranchised voters is defined as including voters who will be disenfranchised in 1972 and later Presidential election years by state residence requirements, then there are members of the class who still face the same problem. Appellants, as representatives of that class, therefore can obtain effective relief for a significant portion of the class concerned with this case, and this Court's opinion in this case will have a positive effect and benefit for millions of voters across the country.

As for the question of Colorado having amended the law down to a two-months residence requirement, appellants contend that even this requirement is still too long and therefore unreasonable. Numerous other states have shown that they can get by successfully with a shorter residence requirement, see Table I of this Brief, and any concern which states might have as to double voting or voter fraud can be eliminated by a simple

letter or telephone call to the voter's old state. Cf. Shapiro v. Thompson, supra, 22 L. Ed. 2d at 616 - 617.

In addition, Colorado allows those who do qualify to apply for a ballot up until the Friday before the election, CRS 49-24-3 (1963), supra. If that length of time is adequate for Colorado to perform all administrative processing and checking desired, then no residence requirement longer than that is necessary.

CONCLUSION

The District Court below erred in upholding the six-months waiting period requirement for the following reasons:

1) The waiting period is not used for and does not serve any "administrative purposes," for a voter can register and apply for the ballot up until Friday before the election.

2) The waiting period doesn't serve to maintain the purity of elections, for the perjury sanction does that. Furthermore, the requirement is too broad and serves to penalize legitimately qualified voters.

3) Article 2, Section 1, does not authorize any voter restriction that violates some other provision of the Constitution.

4) Drueding v. Devlin was wrongly decided originally and should not be allowed further to impede the election of our President.

5) The law of Drueding, even if originally correct, has been modified by subsequent decisions.

6) The District Court below did not even discuss the "right to travel - welfare residence" cases that led to Shapiro v. Thompson, although they were presented to the Court.

7) Cases that were relied upon by the Court do not apply in the special Presidential context, and were dictum anyway.

Thus, under the strict standards of the "compelling interest" test required for both the "right to travel" and the "right to vote," this Court should reverse the District Court's opinion and declare the Colorado waiting period requirement of CRS 49-24-1 (1963) (as amended) to be unconstitutional as violating both the Right to Travel and the Equal Protection Clause. Only then will the unfairness and injustice of disqualifying millions of otherwise qualified voters from voting for President and Vice-President cease, thus enabling similar voters in 1972 and future Presidential election years to have a say in the election of the Nation's

leader and to take part in the great American democratic process.

Respectfully submitted,

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Richard V. Hall

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Christine A. Hall

Appellants, appearing personally pursuant to the provisions of 28 U.S.C. Section 1654.

TABLE I

RESIDENCE REQUIREMENTS IMPOSED BY THE STATES FOR VOTING FOR PRESIDENT AND VICE-PRESIDENT

State	General Requirements	Special Requirements for Presidential Elections
Alabama	1 year; Ala. Code Recompiled 1958, Title 17, § 12	
Alaska	1 year; Alk. Stat., § 15.05.010	4 days; Alk. Stat., § 15.05.012
Arizona	1 year; Ariz. RSA, § 16-101	a) 60 days; Ariz. RSA, § 16-172 b) Retention of residence for 15 months, Ariz. RSA, § 16-171
Arkansas	12 months; Ark. Stat., § 3-101	
California	1 year; Calif. Const., Art. II, § 1	54 days; Calif. Elec. Code, § 751
Colorado	1 year; Colo. Const., Art. VII, § 1, and CRS 49-3-1	6 months (since amended to 2 months), CRS 49-24-1

Connecticut	6 months; Conn. Const., Art. 6, § 1	a) 60 days; Conn. Stat., § 9-163b b) Retention of residence for 24 months, Conn. Stat., § 9-158
Delaware	1 year; Del. Code, Title 15, § 1701	3 months, Del. Code, Title 15, § 4401
Florida	1 year; FSA, § 97.041	30 days; FSA, § 97.031
Georgia	1 year; Ga. Code, § 34-602	30 days; Ga. Code, § 34-602
Hawaii	1 year; Haw. Const., Art. II, § 1, and Haw. R.S., Title 2, § 11-4	
Idaho	6 months; Ida. Code, § 34-401	60 days; Ida. Code, § 34-408
Illinois	1 year; Smith-Hurd Ill. Ann. Stat., Ch. 46:3-1	60 days; Smith-Hurd Ill. Ann. Stat., Ch. 46:3-1
Indiana	6 months; Burns Ind. Stat., § 29-3426	
Iowa	6 months; Iowa Const., Art. II, § 1	
Kansas	6 months; Kan. Const., Art. 5, § 1	45 days; Kan. Const., Art. 5, § 1, and KSA, Ch. 25, § 1801

Kentucky	1 year; Ky. Const., § 145, and Ky. Stat., § 117.605	
Louisiana	1 year; La. Rev. Stat., § 18:31	
Maine	6 months; Me. Rev. Stat., Title 21, § 241	30 days; Me. Rev. Stat., Title 21, § 311.
Maryland	1 year; Md. Const., Art. I, § 1, and Md. Code, Art. 33, § 3-4.	45 days; Md. Code, Art. 33, § 28 - 1,4
Massachusetts	1 year; Mass. Gen. Law, Ch. 51, § 1	31 days; Mass. Gen. Law, Ch. 51, § 1(a)
Michigan	6 months; Mich. Const., Art. 2, § 1, and Mich. Comp. Law, § 168.10	a) 30 days in city or township; Mich. Const., Art. 2, § 3, and Mich. Comp. Laws, § 168.758(a)(1)(b) b) Retention of residence until qualified in new state, Mich. Comp. Laws, § 168.758(a)(1)(b)
Minnesota	6 months; Minn. Stat., 200.02 (25)	30 days; Minn. Stat., 208.21 et seq
Mississippi	2 years; Miss. Stat., Title 14, Ch. 2, § 3235	

Missouri	1 year; Mo. Const., Art. 8, § 2, and Vernon's Mo. Stat., § 111.060	60 days; Vernon's Mo. Stat., § 111.063
Montana	1 year; Rev. Code of Mont., § 23-302	
Nebraska	6 months; Rev. Stat. of Neb., § 32-102	2 days; Rev. Stat. of Neb., § 32-1301
Nevada	6 months; Nev. Const., Art. 2, § 1, and Nev. Rev. Stat., § 293.485	
New Hampshire	6 months; N.H. Rev. Stat., § 54:8	30 days; N.H. Rev. Stat., § 65:1-a
New Jersey	6 months; N.J. Const., Art. II, § 3, and N.J. Stat. Ann., § 19:4-1	a) 40 days; N.J. Const., Art. II, ¶ 3(b), and N.J. Stat. Ann., § 19:58-2 b) Retention of residence until qualified in new state, N.J. Stat., § 19:58-2
New Mexico	12 months; N.M. Const., Art. VII, § 1, and N.M. Stat., § 3-1-1	30 days; N.M. Stat., § 3-17-1 (declared unconstitutional, Op. of Atty. Gen., #67-137)

New York	3 months; McKinney's Consol. Laws, Election Law, Art. 7, § 150	90 days; McKinney's Consol. Laws, Election Law, Art. 7, § 341
North Carolina	1 year; Gen. Stat. of N. Car., § 163-55	60 days; Gen. Stat. of N. Car., § 163-56, 73
North Dakota	1 year; N. Dak. Cent. Code, § 16-01-03	10 days; N. Dak. Cent. Code, § 16-16-18
Ohio	1 year; Page's Ohio Rev. Code, Title 35, § 3503.01	4 days; Page's Ohio Rev. Code, Title 35, § 3504.01 et seq.
Oklahoma	6 months; Okla. Const., Art. III, § 1	15 days; Okla. Stat. 1961, Title 26, § 601 et seq.
Oregon	6 months; Ore. Const., Art. II, § 2	30 days; ORS 247.410 et seq., and ORS 247.070; see Op. of Atty. Gen. #5795
Pennsylvania	3 months; citation unavailable at time of Brief	
Rhode Island	1 year; R.I. Const., Art XXIX, § 1, 2, and Gen. Laws of R.I., Election Law of 1958, § 17-1-3	

South Carolina	1 year; Code of Laws of S. Car., Title 23, § 23-62(3)	
South Dakota	1 year; S. Dak. Code of 1939; Title 16, § 16.0604	
Tennessee	12 months; Tenn Code. Ann., § 2-201	
Texas	1 year; Vernon's Texas Civil Stat., Election Code, § 5.02	a) 60 days; Election Code, § 5.05(a) b) Retention of residence for 24 months, Election Code, § 5.05(b)
Utah	1 year; Utah Code Ann., 1953, § 20-2-11, 13	
Vermont	1 year; VSA, Title 17, § 62	Retention of residence for 15 months, VSA, Title 17, § 67
Virginia	1 year; Code of Va., 1950, § 24-17	
Washington	1 year; Wash. Const., Art. VI, § 1	60 days; Wash. Const., Art. VI, § 1a, and RCW, § 29.72.010

West Virginia	1 year; W. Va. Const., Art. IV, § 1, and W. Va. Code, § 3-1-3	
Wisconsin	6 months; West Wisc. Stat., Title II, § 6.02	a) No minimum; West Wisc. Stat., Title II, § 6.15 b) Retention of residence for 24 months, Title II, § 6.18
Wyoming	a) 1 year; Wyo. Stat. Ann., 1957, § 22-118.3(j) b) Retention of residence until qualified in new state, Wyo. Stat. Ann., 1957, § 22-118.3(k)6	